

§536.142 Qualification of members of Foreign Claims Commissions.

Normally, a member of an FCC will be either a commissioned officer or a claims attorney. At least two members of a three-member FCC must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the armed forces may be appointed to an FCC, subject to prior approval by the Commander USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification for such appointment (for example, lack of legally qualified personnel). The FCC will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another armed force will be appointed a member of an Army FCC only if approved by the Commander USARCS.

§536.143 Settlement authority of Foreign Claims Commissions.

(a) In order to determine whether the claim will be considered by a one-member or three-member FCC, the claimed amount will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable). However, the FCC's jurisdiction to approve is determined by the conversion rate on the date of final action. Accordingly, if the value of the U.S. dollar has decreased, the FCC will forward the recommendation to a higher authority, if necessary.

(b) Payment will be made in the currency of the country in which the incident occurred or in which the claimant resided at the time of the incident, unless the claimant requests payment in U.S. dollars or another currency and such request is approved by the chief of a command claims service or the Commander USARCS. However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country without the approval of the Commander USARCS.

(c) A one-member FCC may consider and pay claims presented in any

amount provided a mutually agreed settlement may be reached in an amount not exceeding the FCC's monetary authority. A one-member FCC may deny any claim when the claimed amount does not exceed its monetary authority. Unless otherwise restricted by the appointing authority, a one-member FCC who is a JA or claims attorney has \$15,000 monetary authority, while any other one-member commission has \$5,000 monetary authority.

(d) A three-member FCC, unless otherwise restricted by the appointing authority, may take the following actions on a claim that is properly before it:

(1) *Disapprove a claim presented in any amount.* After following the procedures in §536.140, including reconsideration, the disapproval is final and conclusive under 10 U.S.C. 2735. The FCC will inform the appointing authority of its action. After it takes final action and disapproves a claim presented in any amount over \$50,000, the FCC will forward to the appointing authority the written notice to the claimant required by §536.140(f), any response from the claimant, and its notice of final action on the claim.

(2) *Approve and pay meritorious claims presented in any amount.* (i) Claims paid in full or in part for an amount not exceeding \$50,000 will be paid after any reconsideration as set forth in §536.140. This action is final and conclusive under 10 U.S.C. 2735.

(ii) Claims valued at an amount exceeding \$50,000, or multiple claims arising from the same incident valued at more than \$100,000, will be forwarded through the appointing authority with a memorandum of opinion to the Commander USARCS for action; see DA Pam 27-162, paragraph 2-60. The memorandum of opinion will discuss the amount for which the claimant will settle and include the recommendation of the FCC.

(e) The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG) and the Commander USARCS, or his or her designee serving at USARCS, may approve and pay, in whole or in part, any claim as long as the amount of the award does not exceed \$100,000; may disapprove any claim, regardless of either the amount